IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21-1-2006

Coram

The Honourable Mr.Justice N.PAUL VASANTHAKUMAR

S.A.No.617 of 1995

Arulmighu Sundareswara Swamy Thirukoil,
Neermulai,
Thiruthuraipoondi Taluk,
Nagai Quaid-e-Milleth District. ... Appellant/Plaintiff

Vs.

K.Bama ... Respondent (1st Respondent)

This second appeal is filed under Section 100 of Code of Civil Procedure against the judgment and decree dated 18.11.1994 made in A.S.No.365 of 1992 on the file of the Sub Court, Nagapattinam, reversing the judgment and decree dated 23.12.1989 made in O.S.No.227 of 1985 on the file of the District Munsif Court, Thiruthuraipoondi.

For Appellant : Mr.T.Dhanasekaran for
Mr.N.Maninarayanan

For Respondent : Ms.Nalinishree
for Mr.S.Viswanathan

J U D G M E N T

Plaintiff in O.S.No.227 of 1985 on the file of the learned District Munsif, Thiruthuraipoondi, is before this Court, challenging the decree and judgment dated 18.11.1994 passed by the learned Subordinate Judge, Nagapattinam made in A.S.No.365 of 1992.

2. The Executive Officer of Arulmigu Sundareswara-swami Thirukoil, Neermulai, Thiruthuraipoondi Taluk, filed the suit for permanent injunction. The case of the plaintiff is that all the suit properties were Community properties and owned by 49 Pattadars in the suit village. Out of the income derived from cultivation of those lands, plaintiff Temple's poojas are being performed and the Kurukkal is being paid salary. It is the case of the plaintiff that for this arrangement, there is no document.

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When one Sundaresa Kurukkal was appointed, the suit properties were entrusted with him. From out of the income derived from the properties, after spending for pooja expenses, he was taking his salary. This practice was continued till his death on 15.6.1985. The first defendant was a distant relative of the said Sundaresa Kurukkal, who was assisting him. She does not know agricultural operations, but claims to be the cultivating tenant under a lease document. The case of the plaintiff is that she cannot be a cultivating tenant under the Tamil Nadu Cultivating Tenants Protection Act. The application filed by the first defendant before the authority, was not entertained. The appeal filed against the same was also dismissed. The Plaintiff is neither owner nor Pattadar of the suit properties and as such, the plaintiff is bound to follow the rules and regulations framed by the owner of the suit properties. After the demise of Sundaresa Kurukkal, one Kuppusamy Kurukkal was appointed. As the first defendant prevented the said Kuppuswamy Kurukkal from cultivating the suit properties, the present suit is filed to restrain her and her men from in any way interfering with the possession and enjoyment of the suit properties by the Plaintiff Temple.

3. The first defendant filed written statement contending that the suit properties are owned by the plaintiff temple and the first defendant is the cultivating tenant of those properties. The tenancy right of the first defendant cannot be disputed with regard to nanja lands. First defendant is enjoying the suit properties and 46½ cents of punja lands. The fact that the first defendant is the cultivating tenant of the suit properties, can be proved by the document dated 1.7.1970. She has also obtained loans from the Agricultural Co-Operative Thrift Society on the suit properties. According to the first defendant, the Plaintiff temple was never in enjoyment of the suit properties. The balance of convenience is in favour of the first defendant. There is no cause of action to file the suit.

4. On the above pleadings, the trial Court framed ten issues and on consideration of the materials and evidence placed before it, the Trial Court decreed the suit as prayed for by its judgment dated 23.12.1989.

5. The aggrieved first defendant, preferred appeal in A.S.No.365 of 1992 on the file of the Sub Court, Nagapattinam. The first appellate Court, after reassessing the entire case by its judgment dated 18.11.1994, allowed the appeal by setting aside the judgment and decree of the

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Trial Court and gave a finding that the plaintiff temple is not entitled to get the relief as prayed for. As against the said judgment and decree, the plaintiff temple has filed the present second appeal.

6. The second appeal was admitted on the following substantial question of law,

> "Whether the lower appellate Court has acted within its jurisdiction in holding that the defendant is the cultivating tenant ?"

7. The learned counsel appearing for the appellant/Temple argued that the lower appellate Court has no jurisdiction to hold that the respondent herein/first defendant is a cultivating tenant entitled to the protection under the Tamil Nadu Agricultural Land Record of Tenancy Rights Act (Act 10 of 1969), as the appropriate authority under the said enactment is only the Tahsildar/Record Officer, and more particularly when the authorities under the Act came to the conclusion that the respondent/first defendant is not the cultivating tenant in the light of Ex.A-2 dated 31.7.1985 and Ex.A-3 dated 6.2.1986. The learned counsel for the appellant further stated that the suit lands were community lands given to the plaintiff Temple for enjoyment alone and one Sundaresa Kurukkal, who was conducting poojas till his death in the year 1985, was in enjoyment of the same. The said Kurukkal cultivated the said lands and from out of the income derived, he conducted poojas in the temple and the balance was taken by him towards his salary/compensation for the services rendered. The learned counsel further submitted that after the demise of the said Sundaresa Kurukkal on 15.6.1985, the newly appointed Priest viz., Kuppuswamy Kurukkal was entrusted with the enjoyment of the suit lands and on 8.9.1995, the respondent/first defendant obstructed the cultivation with her henchmen and caused disturbance. Hence, to protect the interest of the temple, O.S.No.227 of 1985 was filed praying for injunction restraining the respondent herein/first defendant and her men from in any way interfering with the possession and enjoyment of the suit properties by the Plaintiff/Temple. The learned counsel for the appellant further stated that since the possession of the Temple was proved through the Kurukkal, the Trial Court decreed the suit and granted permanent injunction which was erroneously upset by the first appellate Court. According to the learned counsel, the findings of the first appellate Court is contrary to the orders passed by the competent authorities under the Act

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and therefore the same is liable to be set aside.

8. The learned counsel for the respondent/first defendant submitted that though the finding given by the first appellate Court that the respondent herein is a cultivating tenant, may not be proper, as she is in possession of the suit lands, no injunction could be granted in favour of the appellant/Temple, and therefore, the decision of the lower appellate Court in dismissing the suit for injunction is proper and valid. For this proposition, the learned counsel cited the Full Bench decision of this Court reported in AIR 1980 MADRAS 180 (Periathambi Goundan v. The District Revenue Officer, Coimbatore and others).

9. I have considered the rival submissions made by the learned counsel for the appellant/Temple as well as the respondent/first defendant. Admittedly the suit lands are not owned by the appellant/Temple. The suit lands are community lands, entrusted to the appellant/Temple for enjoyment alone for the purpose of conducting poojas in the Temple. The Temple, in turn, for achieving the said object, was periodically entrusting the suit lands to the persons who are performing poojas. They are entitled to cultivate the suit lands and the income derived therefrom is being used for conducting poojas in the Temple and the balance is utilised for remuneration of the Kurukkal/compensation for the services rendered.

10. It is to be noted that the claim of the respondent/first defendant that she is the cultivating tenant entitled to the protection under the Act was negatived by the Sub Collector, Mannargudi in Appeal No.7/1984 dated 31.7.1985. In the said appeal, the order of the Joint Tahsildar dated 25.9.1984 was confirmed. The appellate authority found that patta for 1.75 acres of land in S.No.20/9 is in the name of the Village Community and the Sundareswaraswamy Temple is given the lands for enjoyment; that the Temple in turn entrusted the lands for cultivation to its Kurukkal and one Sundaresa Kurukkal was cultivating the suit lands and after his demise the first defendant claimed that she was cultivating the lands and was looking after the said Sundaresa Kurukkal and hence her name should be recorded in the register as Cultivating Tenant. The said contention was clearly negatived by the appropriate authority/Joint Tahsildar, Tiruthuraipoondi by order dated 25.9.1984 and the same was confirmed in appeal by the Sub Collector, Mannargudi, by his order dated 31.5.1987. The Revision petition No.55 of 1985 filed by the respondent/first defendant before the District Revenue

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Officer, Thanjavur, was also dismissed by order dated 6.2.1986, holding that the suit lands belong to 48 persons of the village and treated as community lands and the same was entrusted to the Temple for enjoyment for the purpose of conducting poojas and no one can claim leasehold right of the lands. The said orders of the authorities, constituted under the Act, have become final. The first appellate Court by mistake of facts and law found that the respondent/first defendant was cultivating the lands even during the life time of the said Sundaresa Kurukkal and therefore she continue to be in possession of the lands, and that there is no mistake in registering her name as Cultivating Tenant.

11. It is to be noted that there is a specific finding by the revenue officials that the respondent/first defendant is not a cultivating tenant and the said Sundaresa Kurukkal alone was in possession of the lands and even assuming that the first defendant was assisting the said Sundaresa Kurukkal, she could be treated only as a permissive occupant and cannot claim any right over the lands as a cultivating tenant. As stated in the plaint, after the demise of Sundaresa Kurukkal the subsequent Priest viz., Kuppuswamy Kurukkal who was conducting poojas alone was entitled to enjoy the lands as per the conditions of the community people and the attempt of the first defendant/respondent in interfering with his cultivation necessitated filing of the suit. The alleged consent given by the then Executive Officer of the Temple that she being in cultivation of the lands, there is no objection for recording her name is only in respect of 46 cents of lands in S.No.1/13 and not in respect of 1.75 acres in S.No.20/9. Therefore, the findings given by the first appellate Court for dismissing the suit and allowing the first appeal is to be treated as a perverse finding.

12. The appellant/Temple having proved that its Kurukkal was in continuous enjoyment of the lands even after the demise of the said Sundaresa Kurukkal and as the said possession was attempted to be disturbed, the suit came to be filed. The Trial Court gave a specific finding that the Temple was in possession of the suit lands through its Kurukkal and hence the Temple is entitled to pray for injunction against the respondent herein/first defendant and I find no reason to set aside the said factual finding.

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13. In the Judgment reported in AIR 1980 MADRAS 180 (cited supra), the Full Bench, in clear and categorical terms held that the question as to whether a person is a Cultivating Tenant or not, is to be decided only by the authorities constituted under the Act and the Civil Court has no jurisdiction to deal with the matter. In paragraph 41 of the said judgment it is held thus,

> "... If the suit is one for a simple injunction only, the question that has to be decided will be, whether the plaintiff landowner was in possession of the suit property on the date of the suit or not, and no other question will arise. All other questions as to the defendant having been previously a cultivating tenant and his surrendering possession of the property subsequently will be only incidental to the determination of the question as to whether the plaintiff has established that he was in possession of the suit property on the date of the suit or not. ..."

Here in this case, I am of the considered view that the Appellant/Temple has proved that the suit lands are in possession and enjoyment of the Temple through its Kurukkal on the date of filing of the suit and therefore the suit for injunction filed by the Temple is maintainable. The contra finding given by the first appellate Court that in view of the consent given by the then Executive Officer to record the name of the respondent/first defendant as cultivating tenant, is erroneous since the consent is given only in respect of some other land and not with regard to the suit lands as stated supra.

14. The documents filed by the respondent/first defendant, particularly the receipts for remittance of paddy, can be treated as remittance made by the first defendant only on behalf of Sundaresa Kurukkal, who was actually in possession of the lands and the said receipts will not give any right to the respondent/first defendant to claim that she was the Cultivating Tenant or she was in possession of the lands permitted by the appellant/Temple.

15. In view of the above findings, I hold that the first appellate Court committed error in dismissing the suit. Consequently, the second appeal is allowed. The judgment and decree of the first appellate Court dated 18.11.1994 made in A.S.365 of 1992 are hereby set aside and that of the Trial Court dated 23.12.1989 made in O.S.No.227

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of 1985 are restored. No costs.
vr

Sd/
Asst.Registrar

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Sub Asst.Registrar

To

1. The Subordinate Judge, Nagapattinam.
2. The District Munsif, Tiruthuraipoondi.
3. The Record Keeper, V. R. Section, High Court Madras.

+ one cc to Mr. S. Viswanathan, Advocate sr no. 2203

PV(CO)
NM(23.02.2006)

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